



**House  
Legislative  
Analysis  
Section**

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WORKER'S COMPENSATION REFORM  
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Senate Bill 67 (Substitute H-2\*)  
First Analysis (5-7-87)

Mich. State Law Library

Sponsor: Sen. Frederick Dillingham  
Senate Committee: Human Resources and Senior  
Citizens  
House Committee: Labor

S.B. 67 (5-7-87)

## **THE APPARENT PROBLEM:**

Despite numerous amendments to the Worker's Disability Compensation Act over the last several years, some people contend that the workers compensation system has remained plagued with problems and is in need of additional reform. Issues that need to be addressed include the definition of disability, clarification of the exclusivity of compensation remedy, and clarification of the "coordination of benefits" provisions.

### Definition of "Disability"

One of the biggest controversies concerning worker's compensation has centered on the definition of "disability." Before the 1981 amendments to the act, the statute contained no definition specifically applicable to personal injuries. The current definition (now contained both in Sections 301 and 401, dealing with personal injuries and occupational diseases, respectively) was provided by Public Act 200 of 1981. It has been criticized by the business community as too broad, allowing a worker to remain designated as "disabled" even though he or she might be able to work in another capacity for which he or she was trained and qualified but which was not "in the employee's general field of employment". Further, the definition sections of the act are due to expire on May 15, 1987, and the legislature must act, or see Michigan return to a tort system of settling worker's compensation claims.

### Exclusive Remedy

Some view an exclusive remedy provision as essential to any constructive, workable disability compensation system. The idea behind a workers' disability compensation system is to provide a means for addressing workplace accidents without resorting to the unpredictable, time-consuming, and potentially expensive tort system. Without a strong exclusive remedy provision, these people contend, a workers' compensation system is duplicative. A recent development in Michigan case law has affected this issue and, consequently, some believe that the act's exclusive remedy provision should be clarified.

On December 23, 1986, in the case of Beauchamp v. Dow Chemical Company, the Michigan Supreme Court ruled that an "action by an employee for an intentional tort by an employer is not barred by the exclusive remedy provision of the Worker's Compensation Act". Whether a tort was intentional is to be determined by applying the "substantial certainty" standard, i.e., whether the employer intended the act that caused the injury and knew that the injury was substantially certain to occur. Ronald Beauchamp brought the action against Dow Chemical, seeking damages for physical and mental injuries suffered while employed by Dow as a result of exposure to "agent orange". The court ruled that an employee's remedy for intentional torts by an employer was not affected by the act because the act addressed accidental and not intentional injuries.

### Coordination of Benefits

"Coordination of benefits" refers to the act's provision that

worker's compensation benefits are reduced by certain specified amounts if the injured employee receives old-age insurance benefits or certain employer-paid benefits during the time period he or she is eligible to receive benefits under the act. Public Acts 201 and 203 of 1981, which became effective on April 1, 1982, amended the Worker's Disability Compensation Act to allow employers to coordinate benefits. (Some contend that the legislature intended the coordination of benefits provision to apply only to workers injured after March 31, 1982, but the act does not specify whether that is the case.)

On October 7, 1985, in a series of decisions, Chambers v. General Motors Corporation, Gomez v. General Motors Corporation, and Franks v. White Pine Copper Division, the Michigan Supreme Court held that the coordination of benefits provisions established by the 1981 acts could be applied to all workers' compensation payments made after March 31, 1982 (including payments to workers injured before that date).

## **THE CONTENT OF THE BILL:**

### Definition of "Disability"

Currently, the act defines "disability" as a limitation of an employee's wage earning capacity in "the employee's general field of employment" resulting from a personal injury or work-related disease. The bill would change the definition to mean a limitation of an employee's wage earning capacity in "work suitable to his or her qualifications and training" resulting from a personal injury or work-related disease. (The definition would be amended both in section 301 and in section 401, which provide for compensation for personal injury and occupational disease, respectively.)

### Exclusivity

Current law provides that the right to recovery of benefits under the act is the employee's exclusive remedy against the employer. The bill specifies that, except as otherwise expressly provided by statute, the only exception to the exclusive remedy provision would be an intentional tort. Under the bill, an intentional tort would exist only when an injury was the result of a deliberate act of the employer and the employer specifically intended the injury. An employer would have to have had actual knowledge that an injury was likely to occur and have disregarded this knowledge. The issue of whether an act was an intentional tort would be a question of law for the court.

### Coordination of Benefits

The bill would stipulate that section 354, which establishes coordination of employer-financed benefits, would only apply to payments for personal injuries which occurred on or after March 31, 1982. Payments for injuries incurred prior to March 31, 1982, that had not been coordinated as of the effective date of the bill, would not be coordinated, considered to have created an overpayment,

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nor be subject to reimbursement to an employer or carrier. Payments for injuries incurred prior to March 31, 1982, that have been coordinated would be considered underpayments. The amount of payment that had been withheld pursuant to the coordination of benefits provision would be reimbursed to the claimant, with interest, within 60 days of the effective date of the bill by the employer or carrier. Persons with injury dates before March 31, 1982 who had repaid amounts alleged to be overpayments would be reimbursed, with interest, within 60 days of the bill's effective date, by the employer or carrier.

### **HOUSE COMMITTEE ACTION:**

The House Labor Committee adopted a substitute which is substantially different than the Senate-passed version. The committee substitute deleted provisions to revise the calculation of the average weekly wage, allow alternative compensation systems, establish the Accident Fund as an independent mutual insurer, specify exceptions to the definition of "employee", specify certain additional noncompensable disabilities, establish a standard of proof for demonstrating a worker's disability, and other provisions. In addition, the substitute bill's coordination of benefits and exclusive remedy provisions differ substantially from the Senate version. The definition of "disability" remains the same as the Senate-passed version.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available at this time.

### **ARGUMENTS:**

#### **For:**

It is essential to Michigan's economic climate that workers' compensation costs be made more competitive. According to a 1984 poll of the Michigan Manufacturers Association membership, workers' compensation was the number one disincentive to doing business in Michigan. Michigan's costs are among the highest in the nation and appear particularly unfavorable when compared with other Great Lakes states. According to the 1984 report of Professor Theodore J. St. Antoine (appointed by the governor to review the workers compensation system), Michigan's insurance rates remain about 18 percent higher than the average of the rest of the Great Lakes states (excluding Indiana, because the inadequacy of its benefit levels would distort any meaningful comparisons). By addressing the definition of "disability" and strengthening the exclusive remedy provision, the bill significantly would enhance Michigan's economic prospects by decreasing workers' compensation costs.

#### **For:**

In order to be effective, any system of workers' disability compensation must rely on an exclusive remedy provision. Workers' compensation systems are alternatives to the tort system. They rest on the belief that in an imperfect world, there are going to be workplace accidents and that seeking retribution through tort law may or may not fairly and adequately resolve such situations — for there may be no clear "fault" involved. A workers' compensation system, then, provides a means for replacing wages that may be lost due to disablement. If other remedies are permitted (i.e., civil claims through tort actions), then the principle behind the workers' compensation system is defeated.

#### **For:**

In addition to taking measures to decrease employers' costs, the bill would benefit disabled workers by reversing the Chambers decision. Many people agree that the coordination of benefits provision was never intended to apply to those injured before the effective date of the 1981 amendment to the act. The bill would not only stop the

coordination of benefits for those injured before March 31, 1982; it would also prohibit any recoupment of benefits that the employer or insurance carrier had paid to workers prior to the Chambers decision and require amounts paid back by injured workers to employers and carriers to be reimbursed, with interest.

#### **For:**

Eligibility for benefits, and thus employers' costs, hinge directly on the definition of "disability", and adoption of the bill's definition is critical if the state is to achieve any real reform. In his 1984 report to the governor's Cabinet Council on Jobs and Economic Development, Professor St. Antoine himself stated that, if he were to write on a clean slate, he would prefer to see the Michigan definition brought closer into the mainstream of American law by adopting the "qualifications and training" language that is contained in the bill. Professor St. Antoine went on to say that such a change could reassure those who believe that the state's definition of "disability" is a major flaw in our compensation system. Similar definitions have been adopted by a number of other states, and the attendant case law could be adapted to Michigan. As things stand now, however, the system is operating blindly under a definition adopted in 1981. Litigation over the previous change is slowly wending its way toward the Michigan Supreme Court, and it could be years before this issue is finally resolved.

Further, redefining "disability" would send an important message to the business and manufacturing community that Michigan is serious about reforming its system and reducing employer costs. It would make a positive change in the perception others have of the law, its impact on employers, and the intentions of state policymakers to mitigate that impact. Having the same definition as other states would help Michigan's competitive position and send a signal that the state is capable of responding constructively to changes in the economy.

#### **Against:**

It is by no means settled that the definition should be altered. In fact, doing so could do far more harm than good, especially in view of the concession by at least one major Michigan corporation (Ford Motor Company) that it "is not certain a change in the definition of disability will have a major impact on the workers' compensation system". What a new definition would do, though, is superimpose over the previous amendments a completely new set of changes that would require entirely different interpretations for a separate period of time. Rather than clarifying and expediting the implementation of the law, the result would be far greater confusion and additional delay. It is not enough to say that other states already have a body of case law, since Michigan's system is based on the relatively uncommon "wage loss" approach. Even if the various systems were compatible, there is no guarantee that Michigan's courts would be the least bit influenced by other states' precedent.

Further, while Professor St. Antoine would prefer a different definition were he to start anew, he also points out that the "qualifications and training" definition probably would be of "small practical consequence". As his report states, the "current statutory language was the product of a hard fought battle, with give and take on all sides. There is something to be said for letting the contending parties rest with their respective gains and losses, at least until we have a considerably clearer picture of just what those may be."

### **POSITIONS:**

The Department of Labor supports the bill. (5-6-87)

The Department of Commerce supports the bill. (5-6-87)